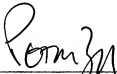


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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 112740-167							
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Application Number 09/762,739	Filed June 19, 2001								
First Named Inventor Karl Kammerlander et al.									
Art Unit 2683	Examiner Stephen M. D Agosta								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. 48, 196 Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  _____ Peter Zura _____ Typed or printed name _____ 312-807-4208 _____ Telephone number _____ May 9, 2006 _____ Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.									
<input checked="" type="checkbox"/> *Total of _____ forms are submitted.									

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Karl Kammerlander
Appl. No.: 09/762,739
Conf. No.: 8564
Filed: June 19, 2001
Title: A METHOD FOR CHANGING RADIO CHANNELS IN A RADIO
COMMUNICATION SYSTEM (as amended)
Art Unit: 2683
Examiner: D Agosta, Stephen M.
Docket No.: 0112740-167

Director of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This request is submitted in response to the Final Office Action dated December 9, 2005. This request is filed contemporaneously with USPTO form PTO/SB/33, "Pre-Appeal Brief Request for Review" and form PTO/SB/31, "Notice of Appeal."

Remarks begin on page 2 of this paper.

REMARKS

Claims 7-12 are presently pending in the application. Independent claim 7 is the focus of this request.

Claims 7-10 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada (EP 0895437 A, hereafter *Hamada*) and further in view of Shepherd et al. (EP 0399612 A2, hereafter *Shepherd*) and Hamalainen (WO 9859441, hereafter *Hamalainen*). Applicants submit the rejection is improper and should be reversed by this board.

Specifically, the cited art, alone or in combination, does not disclose “changing, upon a disturbance of the duplex radio link, only one of the disturbed first or second physical radio channels, wherein the undisturbed first or second physical radio channel is retained,” as specifically recited in claim 7. Furthermore, Applicant notes that claim 7 also recites that the first physical radio channel transmits communication information via an air interface, while the second physical radio channel transmits communication information in an opposite direction to the first physical radio channel via the air interface

As previously argued, the central concept of claim 7 is directed to changing only the disturbed channel in a duplex radio link when a disturbance is detected in mobile radio communication system. For example, a duplex radio link is used by a mobile station and a base station in a mobile radio communication system in both directions (i.e., uplink and downlink - “opposite directions”). If a disturbance occurs with respect to one channel, the uplink channel or the down link channel, it is advantageous to change only the disturbed channel and not both channels.

In contrast, *Hamada* has the deficiency of changing two channels instead of one when a disturbance is detected. While Applicant appreciates the USPTO’s ability to provide the broadest reasonable interpretation of claim language, such an interpretation must be consistent with the features recited in the claims. As mentioned above, while the term “channel” may conceivably be interpreted in multiple ways, the claim requires that the first and second channel communicate in opposite directions - the configuration in *Hamada* clearly does not disclose such a teaching with respect to a disturbance in the link. Instead, *Hamada* teaches using two out of four duplex communications slots (i.e., a second duplex communications slot) (R2, T2) and a

fourth duplex communication slot (R4, T4)) when it is assumed that trouble has occurred in one of the two duplex communication slots. As correctly noted by the Examiner in the Office Action (page 4), *Hamada* is silent with regard to changing, upon a disturbance of a duplex radio link, “only one of the disturbed first or second physical radio channels, wherein the undisturbed first or second physical radio channel is retained.” In fact, *Hamada* teaches or suggests that a pair of communication slots out of the two pairs of slots is retained and the other pair remain disturbed when a disturbance is detected. Therefore, *Hamada* is not only silent with regard to the recited claim feature (i.e., changing only the disturbed channel in a duplex radio link when a disturbance is detected), but actually teaches away from the recited claim feature (i.e., changing two channels instead of one when a disturbance is detected in a duplex radio link).

Shepard teaches that “if it is ascertained from local signal quality measurements that corruption is due to a poor radio link between a secondary station and a particular primary station, the secondary station may handover and communicate via another in-range primary station and/or in another duplex voice channel.”(see col. 5, lines 44-50). Although *Shepherd* teaches or suggests options to reallocate or reassign released time slots or physical channels (see col. 6, lines 9-58 and col. 7, lines 1-14), it is not clear how these teachings relate to changing a disturbed channel of a radio link while the undisturbed channel of the same radio link is retained.

Similarly, *Hamalainen* teaches the allocation of additional time slots in separate TDMA frames where a greater number of time slots can be allocated for the downlink frames in order to improve efficiency of radio resource allocation. However, the allocation of additional time slots is not based on channel disturbances.

In light of the above, Applicant submits that there is no teaching, suggestion or motivation for one having ordinary skill in the art to combine *Hamada* with *Shepard* and *Hamalainen* in the manner suggested in the Office Action. The Patent Office has the initial burden of proving a *prima facie* case of obviousness. *In re Rijckaert*, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993). In making this determination, the question is not whether the differences between the prior art and the claims themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871 (Fed. Cir. 1983)(emphasis added). The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. “To support the conclusion that the claimed invention is directed to obvious subject matter, either the references

must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). (see MPEP 2142).

Further, the Federal Circuit has held that it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention" *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Moreover, the Federal Circuit has held that "obvious to try" is not the proper standard under 35 U.S.C. §103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). "An-obvious-to-try situation exists when a general disclosure may pique the scientist curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claim result would be obtained if certain directions were pursued." *In re Eli Lilly and Co.*, 14 U.S.P.Q.2d 1741, 1743 (Fed. Cir. 1990).

As mentioned above, *Hamada* teaches that disturbed slots communicating in one direction are changed to an open slot ([0048-50, 0062, 0079]). Additionally, *Shepherd* teaches reassignment of a single duplex channel/slot and *Hamalainen* teaches the transmission/reception in different TDMA frames (see above). However, these teachings do not suggest to one of ordinary skill in the art how channel reassignment can be achieved in the case where only one physical radio channel of the two physical radio channels of a duplex communication slot/channel is disturbed.

In light of the above, Applicant respectfully submits that the rejection under 35 U.S.C. §103 is improper, and Claims 7 and 8-12 of the present application are both novel and non-obvious over the art of record. Accordingly, Applicant respectfully requests that the Board overturn the rejection and issue a timely Notice of Allowance in this case. If any additional fees are due in connection with this application as a whole, the Office is authorized to deduct said

fees from Deposit Account No.: 02-1818. If such a deduction is made, please indicate the attorney docket number (0112740-167) on the account statement.

Respectfully submitted,
BELL, BOYD & LLOYD LLC

BY _____

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Dated: May 9, 2006_____